UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-00189-MR

IAIAN EVANS MCCLELLAN,) Plaintiff,) vs.) TODD SCHETTER, et al.,) Defendants.) _____)	**ORDER**

THIS MATTER is before the Court on Defendant Davis' Motion to Set Aside the Entry of Default, Motion for Leave to File the Answer Out of Time, and Motion to Deem Answer Timely Filed. [Doc. 49].

Plaintiff Iaian Evans McClellan ("Plaintiff") filed this lawsuit on July 10, 2020. [Doc. 1]. On April 27, 2021, Plaintiff's Third Amended Complaint ("Complaint") [Doc. 28] survived initial review as to Plaintiff's claims against Defendants Todd Schetter and Caleb Davis for their failure to protect under the Eighth Amendment. [Doc. 29]. On November 9, 2021, because Defendant Davis had not answered the Complaint or otherwise defended this action, the Court ordered Plaintiff to take further action to prosecute this case against Defendant Davis. [Doc. 43]. Plaintiff timely moved for entry of default against Defendant Davis. [Doc. 44]. On December 6, 2021, the

Court granted Plaintiff's motion for entry of default for Davis' failure to timely answer or otherwise respond to Plaintiff's Complaint and ordered the Clerk to enter default. [Doc. 45]. The Clerk entered Defendant Davis' default the same day. [Doc. 46]. Within hours, Defendant Davis filed an Answer to Plaintiff's Complaint, but failed to move to set aside the default or for leave to file the answer out of time. [See Doc. 47]. The Court, therefore, struck Defendant Davis' Answer from the record in this matter. [Doc. 48].

Defendant Davis now moves to have the default lifted and for the Court to allow Davis to file his Answer out of time. [Doc. 49]. As grounds, Defendant Davis argues that the Fourth Circuit prefers to decide cases on the merits, Defendant Davis has legitimate defenses to this action, Plaintiff will not be prejudiced because this case is in the early stages of litigation, the default was not willful, "Moving Defendant has acted as promptly as possible after learning of the error to respond to the complaint," and the delay was not actually Defendant Davis' fault. [Doc. 50 at 3]. The Court will grant Defendant's motion and lift the default in this matter for most of the reasons argued.

The Court notes, however, contrary to defense counsel's assertion, action was not promptly taken to correct this error. Even after the Court entered its Order requiring Plaintiff to prosecute his

case against Defendant Davis, defense counsel did nothing. Then, even after Plaintiff moved for entry of default, defense counsel still did nothing. Defense counsel only acted once default was entered against his client and, even then, failed to take proper action. As noted, instead of moving to lift the default, he simply filed an ineffectual Answer, which the Court struck from the record. Finally, and only with express instruction from the Court, did defense counsel act. The Court grants the instant motion only because Defendant Davis should not bear the faults of his attorney in this circumstance given the balance of the factors and the stage of these proceedings.

Given defense counsel's history with this Court in failing to abide the deadlines of the Federal Rules of Civil Procedure and the Court and to generally manage his cases, the Court will direct the Clerk to send a copy of this Order to James Trachtman, Special Deputy Attorney General, who the Court understands to be defense counsel's supervisor.
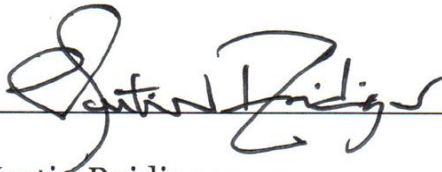
ORDER

IT IS, THEREFORE, ORDERED that Defendant Davis' motion [Doc. 49] is **GRANTED**, the default entered in this matter against Defendant Davis is hereby **LIFTED**, and Defendant Davis' Answer [Doc. 51] is deemed timely filed.

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The Clerk is respectfully instructed to email a copy of this Order to James Trachtman, Special Deputy Attorney General, Section Head, Public Safety Section, North Carolina Department of Justice at jtrachtman@ncdoj.gov.

IT IS SO ORDERED.

Signed: December 17, 2021

Martin Reidinger
Chief United States District Judge